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| | | Application Number | 09/823,050 |
| | | Filing Date | March 29, 2001 |
| | | First Named Inventor | George R. Borden, IV |
| | | Art Unit | 2622 |
| | | Examiner Name | Luong T. Nguyen |
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ENCLOSURES (check all that apply)

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| Remarks Responsive to the Notification of Non-Compliant Appeal Brief, mailed August 14, 2007, the undersigned respectfully submits the enclosed corrected <u>APPELLANT'S BRIEF</u> . | | |

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

| | | | |
|--------------|---|----------|--------|
| Firm | Chernoff, Vilhauer, McClung & Stenzel 601 SW Second Ave., Suite 1600 Portland, OR 97204 | | |
| Signature | | | |
| Printed Name | Kurt A. Rohlf | | |
| Date | August 21, 2007 | Reg. No. | 54,405 |

CERTIFICATE OF TRANSMISSION/MAILING

I hereby certify that this correspondence is being facsimile transmitted to the USPTO or deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date shown below.

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| Typed or printed name | Kurt A. Rohlf | Date | August 21, 2007 |

This collection of information is required by 37 CFR 1.5. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.



**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BOARD OF PATENT APPEALS AND INTERFERENCES**

Applicant: George R. Borden, IV
Appl. No.: 09/823,050
Confirmation No.: 8987
Filed: March 29, 2001
Examiner: Luong T. Nguyen
TC/A.U.: 2622
Customer No.: 55648
Title: CALENDAR BASED PHOTO BROWSER

APPELLANT'S BRIEF

Chernoff, Vilhauer, McClung & Stenzel
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August 21, 2007

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Commissioner for Patents
P.O. Box 1450
Alexandria VA 22313-1450

Dear Sir:

BACKGROUND

This brief is in furtherance of the Notice of Appeal, filed in this case on March 5, 2007.

The fees required under 37 C.F.R. § 41.20(b)(2), and any required petition for extension of time for filing this brief and fees due therefore, are dealt with in the accompanying TRANSMITTAL OF APPEAL BRIEF.

This brief comprises these subjects under the headings, and in the order, set forth below:

- I. Real Party in Interest
- II. Related Appeals and Interferences
- III. Status of Claims
- IV. Status of Amendments
- V. Summary of Claimed Subject Matter
- VI. Grounds for Rejection to be Reviewed on Appeal
- VII. Argument
- VIII. Conclusion
- IX. Claims Appendix
- X. Evidence Appendix
- XI. Related Proceedings Appendix

The final page of this brief bears the practitioner's signature.

REAL PARTY IN INTEREST

The real party in interest in this appeal is Sharp Laboratories of America, Inc., assignee of the captioned application.

RELATED APPEALS AND INTERFERENCES

There are no other appeals or interferences that will directly affect, be directly affected by, or have a bearing on the Board's decision in this appeal.

STATUS OF CLAIMS

A. TOTAL NUMBER OF CLAIMS IN THE APPLICATION

There are 19 claims currently pending in the application.

B. STATUS OF ALL CLAIMS

Claims canceled: 1-32

Claims withdrawn: None

Claims pending: 33-44 and 46-52

Claims allowed: None

Claims objected to: 33, 34-42

Claims rejected: 33-44 and 46-52

C. CLAIMS ON APPEAL

Claims 33-44 and 46-52 are on appeal.

A copy of the claims on appeal is set forth in the Claims Appendix to this Brief.

STATUS OF AMENDMENTS

No amendment was filed after final rejection.

SUMMARY OF CLAIMED SUBJECT MATTER

The claimed subject matter is most broadly set forth in two independent claims.

Independent claim 33 is generally directed to a calendar-based photo file browsing system for browsing a plurality of files, at least one of which is either a digital image file or a digital video file. *See, e.g.* FIG. 1 elements 60 and Specification at p. 7 line 4 and p. 8 lines 14-16. Each digital file has an associated date. See Specification at p. 3 line 16 to p. 4 line 9. Furthermore, the

system has an interface displayed on a display. See Fig. 1, element 12 and Specification at p. 4 lines 12-13. The interface includes two claimed features. First, the interface includes a calendar portion having a range of displayed dates, each respective date containing an indicator indicating the existence of one or more files associated with the respective date. *See* FIGS 1-5, element 10 and Specification at p. 5 lines 8-12. Second, the interface includes a browsing portion enabling a user to selectively increment the range by a month and alternatively enabling a user to selectively increment the range by a portion of a month. *See* FIGS 1-5, element 28 and Specification at p. 5 lines 20-23.

Independent claim 43 is generally directed to a calendar-based photo file browsing system for browsing a plurality of files, at least one of which is a digital image or a digital video file. *See, e.g.* FIG. 1 elements 60 and Specification at p. 7 line 4 and p. 8 lines 14-16. Each digital file has an associated date. *See* Specification at p. 3 line 16 to p. 4 line 9. Furthermore, the system has an interface displayed on a display. See Fig. 1, element 12 and Specification at p. 4 lines 12-13. The interface includes two claimed features. First, the interface includes a calendar portion having a range of displayed dates, each respective date containing an indicator indicating the existence of one or more files associated with the respective date, the indicator being a thumbnail image of a file associated with the respective date. *See* FIG 1, elements 10 and 22, and Specification at p. 5 lines 8-19. Second, the interface includes a browsing portion enabling a user to selectively increment the range by a month and alternatively enabling a user to selectively increment the range by a portion of a month. *See* FIGS 1-5, element 28 and Specification at p. 5 lines 20-23.

GROUND OF REJECTION TO BE REVIEWED ON APPEAL

The grounds of rejection presented for review are (1) whether claims 33-38, 40-44, 46-48, and 50-52 are unpatentable under 35 U.S.C. §103(a) over Suzuki et al., U.S. Pat. No. 6,590,585 (hereinafter Suzuki), in view of Phillips et al., U.S. Pat. No. 6,186,553 (hereinafter Phillips); and (2) whether claims 39 and 49 are unpatentable under 35 U.S.C. §103(a) over the aforementioned combination of Suzuki and Phillips, and in further view of Peairs et al., U.S. Patent No. 6,085,205 (hereinafter Peairs).

ARGUMENT

1. Rejection of claims 33-38, 40-44, 46-48, and 52-50

The Examiner rejected claims 33-38, 40-44, 46-48, and 50-52 under 35 U.S.C. § 103(a) as being obvious in view of the combination of Suzuki and Phillips. To establish a prima facie case of obviousness, an Examiner is obligated to show that the prior art combination teaches all claimed elements. *See* MPEP § 2143. Each of independent claims 33 and 43, from which the remaining claims respectively depend, includes the limitation of “a browsing portion enabling a user to selectively increment said range by a month and alternatively enabling a user to selectively increment the range by a portion of a month.” This limitation is not disclosed by either cited reference, hence the Examiner has failed to state a prima facie case of obviousness.

The Examiner erroneously contends that Phillips discloses the above-quoted limitation at col. 8 lines 1-5. Phillips merely discloses calendar generation software for creating a calendar displaying a *fixed* date range. *See* Phillips at FIGS 3-5 and col. 2 lines 1-6 and 18-21. Phillips indicates, in the portions cited by the Examiner, that the generation procedure is flexible enough to “auto-select date ranges” based on programmed “knowledge of Gregorian and Julian (and

other) calendars for all relevant years. . . . The selected date range allowed by the calendar creation software could be virtually any size (e.g., 2-100 days) and could span month or year boundaries as desired.” *See Id.* at col. 7 line 61 to col. 8 line 4. Any calendar generated using the method of Phillips, however, has a date range that cannot be incremented *at all*, let alone by a user-selected one of a month or a portion of a month. The Examiner is apparently conflating a prior art disclosure of a user-selected *size* of a range of displayed dates, with the claimed step of allowing a user to select the *interval* by which the range, whatever its size, is *incremented*. Phillips discloses the former, not the latter.

Nor does the primary reference, Suzuki, disclose the limitation of “a browsing portion enabling a user to selectively increment said range by a month and alternatively enabling a user to selectively increment the range by a portion of a month.” Instead, that reference requires a user to increment the displayed range by one or more *whole* months, i.e. the user is not able to select an interval, by which the displayed range is *incremented*, of less than a month. Thus each of independent claims 22 and 43, as well as their respective dependent claims 34-38, 40-42, 44, 46-48, and 50-52, is patentably distinguished over the cited prior art.

2. Rejection of claims 39 and 49.

Each of claims 39 and 49 depends from a respective one of independent claims 33 and 43. The Examiner’s rejection of claims 39 and 49 relies upon the erroneous contention, previously discussed, that Phillips discloses the limitation of “a browsing portion enabling a user to selectively increment said range by a month and alternatively enabling a user to selectively increment the range by a portion of a month.” *See Office Action* at p. 7, item 5. Therefore, the

Examiner's rejection of claims 39 and 39 is also improper, for the same reasons as is the rejection of claims 33 and 43.

For the foregoing reasons, independent claims 33 and 43, as well as their respective dependent claims 34-44 and 46-52 each patentably distinguish over the cited prior art, and the Examiner's rejection of these claims under 35 U.S.C. § 103(a) should be reversed.

3. Claim Objections.

The Examiner comments that claim 33, line 10 should be changed to recite "said user" rather than "a user." The applicant agrees to make this correction following this appeal.

CONCLUSION

The Examiner's respective rejections of claims 33-44 and 46-52 should be reversed, and the claims should be found patentable.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Kurt", followed by a series of stylized, overlapping loops and flourishes.

Kurt Rohlf
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Attorney for Applicant
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CLAIMS APPENDIX

1-32 (Canceled).

33. A calendar-based photo file browsing system for browsing a plurality of files including at least one of a digital image or a digital video, each said digital file having an associated date, said system having an interface displayed on a display, said interface comprising:

(a) a calendar portion having a range of displayed dates, each respective said date containing an indicator indicating the existence of one or more files associated with said respective said date; and

(b) a browsing portion enabling a user to selectively increment said range by a month and alternatively enabling a user to selectively increment said range by a portion of a month.

34. The system of claim 33 where said browsing portion permits said user to selectively increment said range by a selected one of a day, a month, and a year.

35. The system of claim 33 where said browsing portion permits said user to adjust the size of said range by a number of days equal to or greater than a week.

36. The system of claim 35 where said browsing portion permits said user to alternate said range between a week and a month.

37. The system of claim 33 where said indicator is a thumbnail image.
38. The system of claim 37 where said thumbnail image is representative of a plurality of images, each associated with the respective indicator's date.
39. The system of claim 33 where each respective displayed date has an associated displayed second indicator indicating the quantity of files associated with said respective displayed date.
40. The system of claim 33 having plural said indicators.
41. The system of claim 40 where each of said plural indicators of a respective said date indicates a category of files.
42. The system of claim 40 where each of said plural indicators of a respective date indicates a time associated with said respective date relative to other said indicators associated with said respective date.
43. A calendar-based photo file browsing system for browsing a plurality of files including at least one of a digital image or a digital video, each said digital file having an associated date, said system having an interface displayed on a display, said interface comprising:

(a) a calendar portion having a range of displayed dates, each respective said date containing an indicator indicating the existence of one or more files associated with said respective said date, said indicator being a thumbnail image of a file associated with said respective said date; and

(b) a browsing portion enabling a user to selectively increment said range by a month and alternatively enabling said user to selectively increment said range by a portion of a month.

44. The system of claim 43 where said thumbnail image is representative of a plurality of images, each associated with the respective indicator's date.

45 (canceled).

46. The system of claim 43 where said browsing portion permits a said user to adjust the size of said range by a number of days equal to or greater than a week.

47. The system of claim 46 where said browsing portion permits a said user to alternate said range between a week and a month.

48. The system of claim 43 where said browsing portion permits a said user to selectively increment said range by a selected one of a day, a month, and a year.

49. The system of claim 43 where each respective displayed date has an associated displayed second indicator indicating the quantity of files associated with said respective displayed date.

50. The system of claim 43 having plural said indicators.

51. The system of claim 50 where each of said plural indicators of a respective said date indicates a category of files.

52. The system of claim 50 where each of said plural indicators of a respective date indicates a time associated with said respective date relative to other said indicators associated with said respective date.

EVIDENCE APPENDIX:

None.

RELATED PROCEEDINGS APPENDIX:

None.